

Message Text

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ACTION NEA-10

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E.O. 11652: N/A
TAGS: EINV, EG
SUBJECT: AMENDMENTS TO EGYPTIAN INVESTMENT LAW

REF (A) CAIRO 5600 (B) CAIRO 1374

1. SUMMARY: AMENDMENTS TO EGYPTIAN INVESTMENT LAW (LAW 43 OF 1974), RECENTLY APPROVED BY CABINET AND STILL AWAITING ACTION BY PEOPLE'S ASSEMBLY, ARE STEP FORWARD IN INCREASING ATTRACTIVENESS OF INVESTMENT IN EGYPT, THOUGH THEY ARE NOT LIKELY BY THEMSELVES TO STIMULATE A GREAT INFLOW OF INVESTMENT FUNDS. AMONG SIGNIFICANT CHANGES PROPOSED ARE PROVISIONS RELATING TO EXCHANGE RATE, TAX EXEMPTIONS, AND FOREIGN CURRENCY ACCOUNTS. END SUMMARY

2. GOE CABINET APPROVED DRAFT OF LONG-AWAITED AMENDMENTS TO LAW 43 ON MARCH 28. MEASURE IS BEING CONSIDERED BY GOVERNMENT (MAJORITY) PARTY OF PEOPLE'S ASSEMBLY AND WILL "SOON" BE PRESENTED TO FULL LEGISLATURE. WE UNDERSTAND THAT SOME CHANGES IN CABINET-APPROVED DRAFT HAVE ALREADY BEEN SUGGESTED AND IT IS UNCERTAIN IN PRECISELY WHAT FORM LEGISLATION WILL EVENTUALLY EMERGE. COMMENTS ON SOME OF WHAT APPEAR TO BE MORE SIGNIFICANT PROVISIONS OF PROPOSED AMENDEMENTS FOLLOW. LANGUAGE OF ENGLISH VERSION WE HAVE (PROVIDED BY INVESTMENT AUTHORITY) NOT ALWAYS
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CLEAR AND IT FAILS TO TRACK, IN SOME CASES, WITH ARABIC TEXT WE HAVE SEEN. COMMENTS SHOULD THEREFORE BE REGARDED AS PRELIMINARY.

3. EXCHANGE RATE:

(A) PROPOSED AMENDEMENTS PROVIDE THAT "INVESTED CAPITAL SHALL BE TRANSFERRED TO, AND EXPORTED FROM THE ARAB REPUBLIC OF EGYPT, AND

PROFITS GENERATED THEREFROM SHALL BE TRANSFERRED IN FOREIGN CURRENCY ABROAD IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, AT THE HIGHEST RATE PREVAILING AND DECLARED FOR FOREIGN CURRENCY BY THE COMPETENT OFFICIAL AUTHORITIES". FORMULA "HIGHEST RATE PREVAILING AND DECLARED ..." ETC. IS TO REPLACE PHRASES "AT THE OFFICIAL RATE" AND "AT THE RATE OF EXCHANGE PREVAILING AT THE TIME OF TRANSFER" THROUGHOUT THE LAW. THUS, THE NEW AMENDMENTS PROVIDE FOR PARALLEL RATHER THAN OFFICIAL RATE VALUATION OF CURRENCY TRANSFERRED FOR INVESTMENT IN LAW 43 PROJECTS. THIS IS A GOAL LONG SOUGHT BY INVESTORS AND LONG ADVOCATED BY THOSE COMMENTING ON HOW EXISTING LAW SHOULD BE ALTERED.

(B) NEW AMENDEMENTS, UNLIKE FIRST DRAFT (REF B) ALSO APPLY "HIGHEST RATE PREVAILING AND DECLARED" TO REAL ESTATE IF IT REPRESENTS "AN INTEGRAL PART OF THE CAPITAL ASSETS" OF THE PROJECT.

(C) QUESTION OF TREATMENT OF INVESTMENTS ALREADY MADE AT OFFICIAL RATE IS HANDLED BY PROVISION FOR ISSUING NON-VOTING BONUS SHARES, IF SHAREHOLDERS AGREE, TO MAKE UP DIFFERENCE BETWEEN OFFICIAL AND PARALLEL RATE VALUATION OF FOREIGN CURRENCY PORTION OF INVESTMENT.

4. IMPORTANT CHANGES RELATE TO FOREIGN CURRENCY BANK ACCOUNTS MAINTAINED BY LAW 43 ENTERPRISES. UNDER PROPOSED AMENDMENTS, THESE ACCOUNTS (FOR FOREIGN EXCHANGE SELF-SUFFICIENT FIRMS) ARE TO BE USED FOR REPATRIATION OF PROFITS AS WELL AS FOR PAYING FOREIGN CURRENCY EXPENSES. SUCH ACCOUNTS MAY BE "FED" BY FX PURCHASE FROM LOCAL BANKS IN ADDITION TO SOURCES CURRENTLY PERMITTED. MOREOVER, PROCEEDS OF LOCAL SALES IN HARD CURRENCY --CONTEMPLATED BY SEVERAL PROSPECTIVE INVESTORS BUT NOT PREVIOUSLY LIMITED OFFICIAL USE

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SPECIFICALLY SANCTIONED-- CAN GO INTO THESE ACCOUNTS. THESE PROVISIONS WILL BE HELPFUL, EVEN THOUGH AVAILABILITY OF FOREIGN EXCHANGE WILL OBVIOUSLY CONTINUE TO BE A MAJOR PROBLEM. REPORTING REQUIREMENT ON MOVEMENT IN THESE ACCOUNTS IS REDUCED TO ANNUAL RATHER THAN QUARTERLY BASIS.

5. TAX EXEMPTIONS:

(A) CURRENT LAW'S BASIC TAX "HOLIDAY" OF FIVE YEARS FROM DATE OF BEGINNING OF PRODUCTION, WITH POSSIBILITY OF EXTENSION TO 8 YEARS IN CASES DEEMED APPROPRIATE BY INVESTMENT AUTHORITY, IS RETAINED IN PROPOSED AMENDMENTS. THIS WILL DISAPPOINT SOME PROSPECTIVE INVESTORS, WHO HAD HOPED FOR LONGER TERM OF DEFERMENT OR FOR STARTING "HOLIDAY" AT TIME ENTERPRISE BECAME PROFITABLE. A NEW PROVISION, HOWEVER, IS THAT PROJECTS INVOLVING RECONSTRUCTION, "NEW CITIES", AND LAND RECLAMATION ARE EXEMPT FROM TAXES FOR 10 YEARS, WITH POSSIBILITY OF EXTENSION TO 15 YEARS. REQUIREMENT THAT PROFITS NOT BE SUBJECT TO TAX ELSEWHERE IS DELETED.

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(B) UNDER NEW PROPOSALS, SHAREHOLDERS WOULD ALSO BENEFIT FROM TAX HOLIDAY, SINCE "PROFITS DISTRIBUTED" ARE SPECIFICALLY DECLARED TO BE ELIGIBLE FOR EXEMPTION. AFTER "HOLIDAY" IS OVER, DISTRIBUTED PROFITS WOULD QUALIFY FOR CONTINUED EXEMPTION FROM GENERAL INCOME TAX UP TO MAXIMUM OF 10 PERCENT (VICE 5 PERCENT IN PRESENT LAW) OF TAXPAYER'S CAPITAL SHARE.

6. AS IN CURRENT LAW, AMENDMENTS PROVIDE THAT CAPITAL EQUIPMENT NECESSARY FOR PROJECTS CAN BE IMPORTED DUTY-FREE. NEW PROVISION MAKES IT CLEAR THAT THIS APPLIES TO CONSTRUCTION MATERIALS AS WELL. INSTEAD OF DOING AWAY WITH REQUIREMENT FOR TOP-LEVEL APPROVAL OF SUCH DUTY-FREE IMPORTATION, HOWEVER, PRIME MINISTER IS SUBSTITUTED FOR PRESIDENT AS THE APPRIVING AUTHORITY. MOREOVER, NEW AMENDMENTS RAISE POSSIBILITY OF MERE DEFERMENT OF DUTIES OR PERMITTING THEM TO BE PAID IN INSTALLMENTS (RATHER THAN COMPLETE EXEMPTION), ALTHOUGH IT IS NOT CLEAR IN PRECISELY WHAT CASES THIS LESSER BENEFIT WOULD APPLY.

7. EXISTING LAW LIMITS CAPITAL REPATRIATION TO VALUE OF CAPITAL AT TIME OF INVESTMENT UNLESS INVESTMENT AUTHORITY SPECIFICALLY APPROVES AN INCREASE BASED ON APPRECIATION. PROPOSED AMENDMENT SIMPLY LIMITS REPATRIATION TO AMOUNT REALIZED UPON SALE, THUS PERMITTING AUTOMATIC GAIN FROM ANY APPRECIATION.
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8. REPATRIATION OF PROFITS:

FOR PROJECTS WHICH ARE FOREIGN EXCHANGE SELF-SUFFICIENT, NEW PROVISION WOULD PERMIT REPATRIATION OF PROFITS ANNUALLY TO EXTENT OF CREDIT BALANCE IN FOREIGN CURRENCY ACCOUNT. CURRENT LAW LIMITS REPATRIATION TO AMOUNT OF FIRM'S EXPORTS. AS NOTED PARA 4 ABOVE, FOREIGN CURRENCY ACCOUNTS, WHICH CAN BE USED FOR PROFIT REPATRIATION, WILL HAVE NEW SOURCES OF FUNDS TO DRAW ON.

9. PROJECTS WHICH ARE NOT EXPORT ORIENTED BUT WHICH "LIMIT THE COUNTRY'S NEED FOR IMPORTS" MAY REPATRIATE PROFITS "WITHIN THE LIMITS APPROVED BY THE AUTHORITY". THUS, MORE EXPLICIT RECOGNITION IS GIVEN TO IMPORT SUBSTITUTION PROJECTS THAN IN PRESENT LAW, ALTHOUGH PROFIT REPATRIATION PROVISION IS MORE RESTRICTIVE. FOR REAL ESTATE, ESPECIALLY LIBERAL REPATRIATION TREATMENT IS GIVEN TO REVENUES FROM "POPULAR", I.E. LOWER-INCOME HOUSING PROJECTS.

10. SALARIES PAID TO FOREIGN EMPLOYEES WILL BE EXEMPT FROM THE GENERAL INCOME TAX (BUT NOT FROM THE TAX ON EARNED INCOME) AND LIMIT OF L.E. 1,000 IS PLACED ON NOTARIAL FEES. CONTRACTS AND DOCUMENTS RELATED TO ESTABLISHMENT OF THE ENTERPRISE ARE TO BE EXEMPT FROM STAMPTAXES (WHICH, IN THE CASE OF A LARGE INVESTMENT, CAN BE A SIGNIFICANT COST).

11. WITH RESPECT TO FREE ZONES, MOST SIGNIFICANT PROVISION PROPOSED IS THAT CUSTOMS DUTIES WHICH WOULD BE PAYABLE ON PRODUCTS ENTERING EGYPT FROM FREE ZONE IS REDUCED BY 50 PERCENT IF LOCAL COMPONENTS COMPRISE 40 PERCENT OF THE PRODUCT INVOLVED.

12. AS NOTED, THESE CHANGES ARE GENERALLY HELPFUL AND, IF ADOPTED, ARE LIKELY TO BE WELCOMED BY PROSPECTIVE INVESTORS. TOGETHER WITH GREATER DYNAMISM BEING DISPLAYED BY INVESTMENT AUTHORITY AND RECENT APPROVAL OF LARGE NUMBER OF PENDING INVESTMENT PROPOSALS, THEY WILL HELP IMPROVE OVERALL INVESTMENT CLIMATE. FOREIGN LIMITED OFFICIAL USE

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EXCHANGE SHORTAGES AND OTHER BARRIERS TO ADDITIONAL INVESTMENT WILL NEVERTHELESS REMAIN FORMIDABLE.
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